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Looked after children and youth justice: A response to recent reviews.

Abstract

Purpose

The paper provides a response to a recent government-commissioned review of residential care (Narey 2016), and the subsequent government response (Department of Education [DfE] 2016), which minimise the correlation between the experience of being looked after and becoming involved in the youth justice system. The Narey review emphasises the role of early adversity in looked after children's offending behaviour but minimises the significance of experiences during and after care, and downplays the effect of policies and practices that may exacerbate looked after children's involvement in the youth justice system.

Design/methodology/approach

The paper builds upon a systematic literature review conducted for the Prison Reform Trust (Author 2016) to demonstrate the extent of current knowledge about how risk factors, adverse experiences during and after care, and the criminalisation of looked after children combine to increase the likelihood of involvement in criminal proceedings. That papers also highlights gaps in the research evidence, particularly in relation to gender and ethnicity.

Findings

The findings suggest that the Narey review (2016) and the government response (DfE 2016), are misguided in their attempts to minimise the role of care in looked after children's disproportionate representation within the youth justice system. The paper cautions against the over-simplification of a complex relationship and emphasises the importance of recognising the intersection between different factors.

Originality/value

The paper uses secondary sources to develop an original argument to rebut claims within a recently published review.

Keywords

Youth justice, looked after children, offending, residential care, foster care, Narey review

Introduction

There has been much interest recently in the involvement of looked after children in the youth justice system in England and Wales, with the Prison Reform Trust (2016) conducting an independent inquiry, and Charlie Taylor (2016) and Sir Martin Narey (2016) being commissioned by the government to conduct broader reviews that encompassed it within their remit. While the conclusions of first two reviews are similar, concluding that children's experiences while in care contribute to an increased likelihood of involvement in the youth justice system, Narey takes a different stance, arguing that children in care are not 'somehow propelled' into custody (2016:39). Instead, Narey posits that 'the time spent in care was often a relatively small part of their troubled and often neglected childhoods' (2016:39), suggesting that the experience of being in care is not a significant factor in looked after children's involvement in offending behaviour. He states that 'we should expect the neglected and abused children who have to be taken into care ... to be significantly represented in the custodial population' (2016:39), inherently rejecting research that shows care can be a positive and protective environment for many. This stance is echoed within the government's response to Narey:

We also welcome his view that the fact that children in homes are more likely to be subject to criminal proceedings is a reflection of the challenges this group face, including their experiences prior to becoming looked after, rather than an indication of the quality of care they receive.

(DfE 2016:12)

This paper counters this argument by illustrating how the impact of experiences during and after care on looked after children's involvement in the youth justice system should not be downplayed. As Narey (2016) states, looked after children are significantly more likely to be subject to criminal proceedings than other children, which can lead to a range of negative outcomes, including low educational attainment, unemployment, homelessness or housing problems, substance misuse, and poor emotional, physical and mental health (Ausbrooks et al 2011; Herz et al 2012; Dixon et al 2015).

The relationship between care and offending

Understanding the relationship between care and offending is complex: as discussed below, many of the risk factors for involvement in offending behaviour are the same as those that precipitate entry into the care system, such as the experience of abuse, neglect or violence, family instability and poor parenting, disadvantage and deprivation. However, research also indicates that becoming looked after can both increase and reduce the likelihood of being involved in offending behaviour – the former through children being inappropriately drawn into the youth justice system through processes that may label and criminalise them for what could be considered ‘normal’ teenage rebellion, the latter through providing high-quality, stable placements that promote resilience (Schofield et al 2014). Such research shows that the experience of care itself, and not just the pre-care factors that precipitate admission to care, influence the likelihood of involvement in the youth justice system.

However, there are significant gaps in research knowledge about why looked after children are disproportionately represented in the youth justice system. This paper provides an overview of how pre-care risk factors, experiences in care, difficulties faced when leaving care, and structural criminalisation combine to result in the disproportionate representation of looked after children in the justice system.

Statistical correlations

As Narey (2016) highlights, there is a lack of reliable data on which to draw conclusions about the correlations between being looked after and being involved in the youth justice system, making analysis of the association between being looked after and being involved in offending behaviour problematic (Author 2016). Nonetheless, statistics available for England and Wales show that children in care are significantly more likely to be sanctioned for an offence than children in the general population (DfE 2015); despite less than 1% of all children and young people in England being in care, 37% of those in Young Offender Institutions, and 38% of boys and 43% of girls in Secure Training Centres report having spent time in local authority care (Simmonds 2016).

However, the statistical data provides only a very basic picture, identifying but not explaining the correlation. Although a number of relatively small-scale qualitative studies have contributed to the evidence base (for example, Taylor 2006; Schofield et al 2014; Shaw 2014), not enough is known about these young people’s particular experiences of care – the age at which they were first taken into care, the extent of the adversities faced prior to care, the

number or length of care episodes, the returns home, whether placements were in foster or residential care, with or without siblings, were ongoing or had disrupted/ended, and so forth. Nor is enough known about the nature, severity or frequency of alleged offending behaviour, nor always whether the offending behaviour occurred prior to, during, or after a period of time spent in care. As a result, knowledge of the specific relationship between being looked after and being involved in the youth justice system is somewhat limited.

Background risk factors

An extensive body of research demonstrates that looked after children experience a range of risk factors which are the same as, or similar to, the risk factors for involvement in offending behaviour, such as neglect, abuse, poor parental supervision, poor educational attainment, substance misuse, anti-social peers, mental health and behavioural difficulties (Shin 2004; Farrington et al 2006; Darker et al 2008; Traube et al 2012). From this perspective, the experience of early adversity and disadvantage is seen to result in looked after children exhibiting behavioural difficulties (such as anti-social behaviour, aggression and oppositional disorders) that may lead to involvement in the youth justice system (Goodman and Goodman 2012; Schofield et al 2014; Barrett et al 2015). As noted, this was the stance taken by Narey (2016) and the subsequent government response (2016), which suggest that the causes of disproportionate representation lie with the adverse experiences looked after children experience prior to entry to care – thus implicitly acknowledging that, for some children, being taken into care is unable to compensate for the difficulties already faced.

Experiences while in care

However, , there is clearly a more complex interplay between background risk factors and later experiences, with research evidence indicating that experiences while in care can either mitigate or contribute to young people's involvement in offending behaviour. The extensive body of research into treatment foster care (Macdonald and Turner 2008; Price et al 2012), and mainstream foster care (Farmer et al 2004; Darker et al 2008), demonstrates that care can be a positive experience for many children, providing a protective environment that can significantly benefit their life chances (Schofield et al 2014; BAAF 2015). It can reduce the likelihood of children and young people becoming involved in offending behaviour through intensive, targeted support, reducing contact with other young people involved in offending behaviour, addressing mental health difficulties, facilitating educational attainment, and

reducing placement instability and disruption (Biehal et al 2012; Robst et al 2011). Conversely, not addressing these risk factors can exacerbate children's involvement in offending behaviour:

Though children's backgrounds should not be used as an excuse for their behaviour it is clear that the failure of education, health, social care and other agencies to tackle these problems have contributed to their presence in the youth justice system

(Taylor 2016:2)

There is substantial research evidence to suggest that, for some children, care has a negative impact on their offending trajectory. The experience of being placed in care itself, particularly during adolescence, may adversely influence an individual's involvement in offending behaviour, irrespective of the quality of the placement (Blades et al 2011; Shaw 2012; Schofield et al 2014). Much research indicates looked after young people's behaviour is influenced by a complex interplay of factors while they are in care, including peer and staff relationships (Taylor 2006; Hayden 2010), the challenging dynamics within care placements and policies, practices, cultures and environments, including supervision, discipline and behaviour management techniques (Hicks et al 2009; Schofield et al 2014; Shaw 2014). The impact of these factors will vary depending on the type, nature and duration of placement, and the age and characteristics of the young person (Mason et al 2003), which in turn are affected by their early pre-care experiences; a complex interplay that is discussed later. Additionally, there is a strong correlation between placement instability and offending behaviour, even after controlling for prior problem behaviour (Ryan et al 2007; Cusick et al 2011; HMIP 2012; Schofield et al 2014), an issue that is not commented on by Narey (2016).

Research demonstrates that children in residential care tend to have more involvement with the justice system than those placed with foster carers (Ryan et al 2008, Bullock and Gaehl 2012). What is less clear is whether the apparent increased rates of offending in residential care are a reflection of the particular profile of those in residential care, the interplay between their early risk factors and later experiences, or a result of particular policies and practices within residential care. For example, those in residential care tend to be older than those placed in foster care (Shaw 2012); have more complex needs; have previously experienced foster care placements; have experienced greater placement instability; and/or be considered harder to place (Sinclair et al 2007; Oriol-Granado et al 2015).

A propensity to see residential care as a ‘last resort’ for children and young people with the most challenging behaviours, and a reduction in the number of children’s homes, can lead to a concentration of high-need children and a concomitant high rate of placement instability and change within residential units (Ryan et al 2008; Hicks et al 2009), which in itself can contribute to offending behaviour. In addition, the continued shortage of foster carers (Fostering Network, undated) means that the opportunity for matching children’s needs with the most appropriate care provision is limited, which can hinder the development of positive relationships with staff or carers (Farmer et al 2004; Lipscombe 2006). Difficulties in interpersonal relationships, whether in foster or residential care, and an overall sense of powerlessness felt by staff or carers trying to maintain authority (which may be exacerbated by their perceived low status and lack of training) can sometimes mean that more challenging behaviour cannot be effectively dealt with, resulting in recourse to the police and youth justice agencies (Hayden 2010; Shaw 2012, 2014; Schofield et al 2014). This structural criminalisation of children and young people is discussed further below.

Transitions from care

The lack of detailed, reliable statistics and research evidence on looked after children’s offending trajectories means that, for many children and young people, it is not known whether their involvement in the criminal justice system occurred while they were in care, or after they left care (or both). It is recognised that leaving care is a key point of transition (Schofield et al 2014) and one that can be critical in influencing young people’s involvement in offending behaviour. Resettlement and the transition to independence may be particularly problematic for looked after children serving custodial sentences (Fitzpatrick and Williams 2014; HMIP 2015). The provision of leaving care programmes and initiatives such as ‘Staying Put’ or ‘Staying Close’ can assist young people with preparing for independence, developing life skills, accessing housing, employment, education, financial, social and personal support, which may, in turn, reduce potential involvement in offending behaviour (Dixon et al 2006; Munro et al 2012; Lee et al 2014). Conversely, research does show that a lack of on-going personal, social, psychological, financial and health support, inappropriate accommodation, limited education or training opportunities and difficulties in family and peer relationships, can all increase the likelihood of a previously looked after child becoming involved in the criminal justice system (Dixon et al 2006; Cusick et al 2011; Centre for Social Justice 2014; Public Accounts Committee 2015).

Structural criminalisation

There is substantial evidence to show that policy and practice can impact on the likelihood of looked after children being drawn into the youth justice system – both negatively and positively. The responses of foster carers and care staff to challenging incidents, and the behaviour of the police, legal professionals and judiciary towards those with looked after status are influenced and guided by national, local and institutional policies and practices, some of which may increase the likelihood of criminal justice interventions. As noted earlier, some foster carers and residential care staff, when faced with challenging behaviour that they feel unable to effectively deal with, particularly if they are working within a framework of bureaucratic, risk-averse, practice, turn to the police and youth justice agencies, leading to looked after children being drawn into the criminal justice system (Hayden 2010; Shaw 2012, 2014; Schofield et al 2014).

Charlie Taylor, in his review of the youth justice system, acknowledges that ‘While many of the factors which result in children being taken into care are also linked to offending, it is likely that the way care homes and the police respond to minor offending by this group contributes to their over-representation’ (2016:23). For example, research suggests that the police are too frequently called to respond to minor offences (such as damaging property or ‘kicking off’) in some care homes, with low thresholds for police involvement despite the existence of practice protocols designed to reduce such contact (Taylor 2006; Hayden 2010; Blades et al 2011; Schofield et al 2014; Shaw 2014).

Narey, however, largely dismisses those who report instances of children being prosecuted for relatively harmless behaviour as using ‘dramatic licence’ and being ‘fanciful’ (2016:34). He does acknowledge that there are ‘individual homes which are negligent in this respect. Occasionally there may be cases that unnecessarily reach the courts, or results in a child being needlessly reprimanded’ (2016:35-36) but seems to underestimate the impact on individual children of this ‘negligence’. What Narey does not do is consider the particular experiences, care/justice pathways and transitions for each of these children and how some children, particularly those who may already be vulnerable to involvement in the justice system due to their pre-care and care experiences, may be more affected by this kind of ‘negligence’ than others. The potentially cumulative impact of early adversity, negative experiences in care and structural/process decisions on young people’s involvement in criminal proceedings is discussed later.

Narey (2016) does give examples of children's homes tolerating more serious and persistent behaviour but says little about the nature of this behaviour, nor the policies and practices that are successful in supporting staff, beyond briefly acknowledging the growing use of restorative justice approaches. The review does not consider the impact of broader factors that may influence behaviour management policies within a care setting; for instance, differing staff thresholds and tolerance levels; staff experience; individual relationships between staff and young people; relationships with local police; and the organisational and managerial ethos and culture may all affect the likelihood of police involvement (Hayden 2010; Schofield et al 2014; Shaw 2014).

Narey also says that the police and Crown Prosecution Service offer further 'filters' to stop looked after children from being unnecessarily criminalised, but then acknowledges that 'There may be instances where the police unnecessarily record, as a crime, a minor incident in a home. This is because the Home Office counting rules allow the police very little flexibility' (2016:46). The government response to Narey also emphasises the perceived need to report alleged offending behaviour to the police and that existing reporting rules are appropriate:

The government is clear that unacceptable behaviour, particularly when repeated, or when immediately serious, is properly referred to the police. we do not believe changing crime recording rules is required to achieve this as the system already gives police the flexibility necessary.

(DfE 2016:12)

The police are also potentially under pressure from carers/care staff and the community to respond to challenging behaviour, to meet the needs of alleged victims and reassure members of the public. However, research indicates that some looked after children have reported feeling discriminated against by the police (Blades et al 2011; All Parliamentary Group for Children 2014; National Police Chiefs' Council 2015). Furthermore, research suggests that looked after children receive differential treatment in court than non-looked after children, which may further draw them into the youth justice system (Lipscombe 2006; Blades et al 2011; Herz et al 2012; Shaw 2014).

Interplay

What is clear from the research is that many factors may contribute the disproportionate representation of looked after children within the youth justice system, but there is a lack of both qualitative and quantitative data on the particular pathways – which factors are most important, how these differ for different offending trajectories and so forth. Narey (2016) is right to acknowledge the impact of early adversities on offending behaviour but oversimplifies the argument by minimising the impact of other experiences and processes and not considering the interplay between factors. As Bullock and Gaehl (2012) conclude, offending behaviour is not constant and the likelihood of being involved in it varies over time, with much depending on the child's characteristics and predisposition, life events and the quality of interventions received during and after care. In this way, decisions made by care staff, the police or other professionals about one child may have a limited impact on their involvement in the youth justice system, but the same decision made about another child may have an entirely different outcome and contribute to their criminalisation.

That there is a complex relationship between the child's background and their care experiences, and the interaction between risk and resilience factors is clear. Unpicking the interplay between children's different backgrounds, experiences and pathways through care is key to understanding why some looked after children are more likely than others to become involved in the youth justice system. As Herz and others (2012) argue, more attention has been paid to establishing a relationship between care and offending than has been given to identifying the specific characteristics that influence individual involvement in offending behaviour, although research in this area is growing. For instance, Schofield and colleagues (2014) compared the experiences of looked after children who offended, non-looked after children who offended, and looked after children who did not offend, and found that each group were exposed to similar risk factors but experienced them at differential rates. For example, the looked after offenders experienced more exposure to risk factors than the other groups, and looked after non-offenders had greater resilience. Furthermore, these risk and resilience factors interact: children who enter care having experienced abuse, trauma and so forth are then particularly vulnerable to being negatively influenced by relationships and experiences within care. This impact of this interaction is then exacerbated by involvement in the youth justice system itself, which can further criminalise looked after children.

For example, as noted above, there is a strong association between a history of placement instability and offending behaviour; placement instability can be related to difficulties in

managing children's challenging behaviour (Norgate et al 2012). Such behaviour may be a result of early adversities and/or be demonstrated as a defence mechanism against the uncertainty of being in care itself (Farmer et al 2004; Skoog et al 2015), and may hinder the development of a supportive relationship with a carer. The lack of a positive relationship within a care placement may lead to a young person feeling excluded and marginalised (Taylor 2006; Winter 2015) or lacking support and security, which some children believe increases the chances of them becoming involved in offending (Blades et al 2011), in turn further increasing the risk of placement breakdown.

Similarly, pre-birth factors (poor maternal health, maternal substance misuse and so forth) and early experiences of abuse, neglect and maltreatment increase the likelihood of looked after children developing mental health problems, but these difficulties can also be exacerbated by moves within the care system and the impact of separation and loss (Luke et al 2014). Difficulties in accessing mental health services and managing mental health problems can then contribute to placement instability (Farmer et al 2004; Norgate et al 2012), undermining the relationships built with carers/care staff, and disrupting education (Shaw 2014). Again, this can then have negative consequences on psychological and emotional wellbeing and subsequent behaviour - further increasing the possibility of involvement in criminal proceedings.

A circular relationship also exists between educational attainment and involvement in the youth justice system for looked after children. Although there has been an improvement in educational progress for looked after children in most local authorities in England and Wales, their attainment still does not equal that of young people in the general population (Sebba et al 2015). Poor experiences of education, including school exclusion and truancy and poor educational attainment, are recognised as having a significant impact on offending behaviour and trajectories (McAra and McVie 2010), particularly for those in care (Taylor 2006; Ryan et al 2007). Looked after children and young people are particularly likely to have speech, language and communication difficulties, and/or special education needs, which may affect their engagement with education and other social interaction (DfE 2014; Schofield et al 2014). Looked after children are more likely to experience exclusion from school or be involved in truancy – which then increases the likelihood of them becoming involved in the youth justice system, with concomitant negative effects on educational involvement and placement stability.

Interplay with gender and ethnicity

The omission of any discussion of gender or ethnicity in Narey's report is notable. Looked after girls are significantly over-represented within the youth justice system and in custody, to a much greater extent than boys. There is some evidence to indicate that looked after girls may have experienced more difficulties prior to placement than boys (being more likely to have been abused, to have self-harmed or attempted suicide, to have a greater number of background adversities (O'Neill 2001; Farmer et al 2004; Lipscombe 2006)), which accords with Narey's view that the correlation between care and offending results from early adverse experiences. However, research also suggests that girls may experience differential treatment within the care and justice systems, for example with some professionals (including foster carers, residential care staff and youth justice practitioners) believing that girls are more difficult to work with than boys (Lipscombe 2006; Bateman and Hazel 2014). Such reluctance to work with girls may contribute to an increased chance of having experienced a higher number of care placements – which, as noted earlier, can itself contribute to involvement in offending behaviour.

The interplay between ethnicity, looked after status and offending behaviour is also a significantly neglected area of research, although there are long-standing concerns about the over-representation of some minority ethnic groups (for example black and mixed heritage children, travellers and Gypsy/Roma children) in the youth justice system (Simmonds 2016). There is also some over-representation of Traveller and Gypsy/Roma within the care system (DfE 2015) but whether black and mixed heritage children are also over-represented within the care system is debated (Bywaters et al 2014). Research on the specific experiences of girls from minority ethnic backgrounds is particularly lacking and more analysis is needed to unpick the intersectionality between gender, ethnicity, looked after status and involvement in the youth justice system.

A complex relationship

Narey (2016) is right to acknowledge that there is a wide range of initiatives, protocols and policies that have contributed to a reduction in the inappropriate criminalisation of looked after children by the care and justice systems. However, as he acknowledges, it is unclear how widespread or well-integrated these initiatives are, nor what the impact of these practices are

on individual children, particularly those who – for many reasons – may already experience an increased risk of involvement in offending behaviour.

From the research evidence discussed here, it is clear that involvement in the youth justice system is likely to result from a complex interaction between early adversity, individual characteristics and resilience, experiences in care and after care, and involvement with different professional systems (Schofield et al 2014; Author 2016). There is some evidence to suggest that looked after children who offend are more likely to have experienced a greater level of adversity prior to care or to have particular difficulties (for example, being more likely to have been abused or neglected, to have special educational needs, or to have more mental health problems) but more research is needed to fully understand how these factors inter-relate with experiences during and after care to influence individual pathways into offending. As Narey recognises:

It is very difficult to link a period in a children's home to educational or other outcomes when most children spend only brief periods in them (more than half for less than 3 months and 83% for less than a year). Various pronouncements, including those that seek to link residential care to poor academic outcomes, or to spending future time in custody, generally fall into the trap of confusing correlation with causation.

(Narey 2016:10).

However, Narey has, to some extent, fallen into the same trap, suggesting that it is the early experience of adversity that causes looked after children to be disproportionately represented in the youth justice system, rather than unpicking the research evidence and inter-relationships further. For instance, for some children a short stay in care may be almost insignificant but for others it could be traumatic and influence their involvement in offending; for some children, a long stay in care may be protective and increase resilience, but for others - particularly if they experience placement instability or insecurity - it may have a significant impact on their involvement in the youth justice system. Narey does not consider how some children may be particularly resilient and less affected by 'negligence' or how others may be more vulnerable and therefore more likely to be drawn into the youth justice system as a result.

Conclusions

While recognising the positive impact of local protocols and improvements in practices within care settings, Narey acknowledges that further investment and development is still needed to reduce the risk of inappropriate criminalisation. Identifying appropriate interventions requires the impact of factors such as age of entry and reasons for entry into care, the length of time spent in the care system and movements within care to be disentangled, such that it becomes possible to understand how becoming looked after can be a protective factor for some yet exacerbates offending for others (Blades et al 2011). There is a need to continue to develop specific knowledge of children's individual journeys through the care and justice systems, to unpick the association between care and offending in more detail, to understand whether looked after children are committing relatively minor offending that escalates, perhaps as a result of being drawn into the system, or whether they are committing more serious offences from the outset – something that none of the recent reviews has considered. Further exploration is needed of how the theories put forward to explain the disproportionate representation of looked after children intersect – how the interplay between gender and ethnicity, risk and resilience factors, adverse experiences during and aftercare, and the criminalisation of children in care combines to exacerbate looked after children's involvement in the youth justice system.

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